

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,	)	8:17CV338
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
STATE OF NEBRASKA,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on the motion and notice of address change filed by Plaintiff Justin Gardner. (Filing No. [27](#).) The court liberally construes Plaintiff's motion as a response to the court's order entered on December 12, 2017, requiring Plaintiff to show cause why this case should not be dismissed for failure to pay the initial partial filing fee. (Filing No. [26](#).)

I. BACKGROUND

Plaintiff filed his Complaint under [42 U.S.C. § 1983](#) on September 15, 2017. (Filing No. [1](#).) Although Plaintiff provided a home address, the Complaint was mailed from an unspecified institution operated by the Nebraska Department of Corrections. On September 19, 2017, the court directed Plaintiff to submit the \$400.00 filing fee or a request to proceed in forma pauperis ("IFP") within 30 days. (Filing No. [10](#).) Plaintiff filed a Motion for Leave to Proceed in Forma Pauperis ("IFP") on September 28, 2017, which listed the Nebraska Department of Correctional Services Diagnostic and Evaluation Center ("DEC") as his place of confinement. (Filing No. [12](#).) On November 1, 2017, the court granted Plaintiff leave to proceed IFP and ordered Plaintiff to pay an initial partial filing fee of \$59.13 within 30 days. (Filing No. [21](#).) Plaintiff failed to submit payment or request an extension of time within the 30 days. On December 12, 2017, the court ordered Plaintiff to show cause why his case should not be dismissed for his failure to pay the initial partial filing fee. (Filing No. [26](#).)

Plaintiff filed the present motion on December 21, 2017. In his motion, Plaintiff indicates he is currently being held at the Nebraska Department of Correctional Services Lincoln Correctional Center ("LCC"), but had previously been at the Work Ethic Camp ("WEC") in McCook, Nebraska, and the "Phelps County Corrections

Jail.” Plaintiff states he received the court’s November 1, 2017 Memorandum and Order granting his motion to proceed IFP, but does not indicate when he received it nor if he received the court’s December 12, 2017 Order to Show Cause. Plaintiff represents he did not have access to the funds in his institutional account while he was in Phelps County Corrections because the money was never forwarded from WEC. Plaintiff also states he had problems receiving his mail in a timely manner due to him moving between facilities and due to LCC personnel preventing him from contacting the court to update his address. Petitioner asks “if there will ever be a pretrial conference order [or] any evidentiary hearings,” and he requests “a few notice of Appeals from this court.” (Filing No. [27](#).)

## II. DISCUSSION

The court finds that Plaintiff has shown good cause for his failure to pay the required initial partial filing fee by the established deadline based on his representation that he lacked access to the funds in his account while he was incarcerated in Phelps County Corrections. The court is also persuaded that Plaintiff has made good faith efforts to keep the court apprised of his address and to monitor the status of his case but has been hindered by difficulties arising out of his transfer between three different correctional facilities since the filing of his Complaint. Accordingly, the court will grant Plaintiff an additional 30 days to submit the initial partial filing fee of \$59.13 to the clerk’s office. Plaintiff must pay this initial partial filing fee within 30 days or his case will be subject to dismissal without further notice. Plaintiff may request an extension of time if one is needed.

Plaintiff is advised he will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. See [In re Tyler, 110 F.3d 528, 529-30 \(8th Cir. 1997\)](#); [Jackson v. N.P. Dodge Realty Co., 173 F. Supp. 2d 951 \(D. Neb. 2001\)](#).

IT IS THEREFORE ORDERED that:

1. Plaintiff’s motion (Filing No. [27](#)) is granted to the extent Plaintiff has shown cause for his failure to pay the initial partial filing fee. The remainder of the motion is denied.
2. Plaintiff must pay an initial partial filing fee of \$59.13 within 30 days, unless the court extends the time in which he has to pay in response to a written motion. Failure to do so will subject this case to dismissal without further notice.

3. After payment of the initial partial filing fee, Plaintiff's institution must collect the additional monthly payments in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#), and forward those payments to the court.

4. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.

5. The clerk's office is directed to set a pro se case management deadline in this case using the following text: **February 26, 2018: initial partial filing fee payment due.**

DATED this 25<sup>th</sup> day of December, 2017.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge